

090785

PRESENTED: JUL 13 2009

ADOPTED: JUL 13 2009

**RESOLUTION TO APPROVE RESTATED FLINT CITY
MARKET LEASE AGREEMENT****BY THE MAYOR:**

WHEREAS, The City of Flint is the Landlord for the Flint City Market located at 420 E. Boulevard, Flint, MI. The City of Flint requests approval to enter into a Restated Flint City Market Lease Agreement with the Tenant, Uptown Reinvestment Corporation, a Michigan nonprofit corporation.

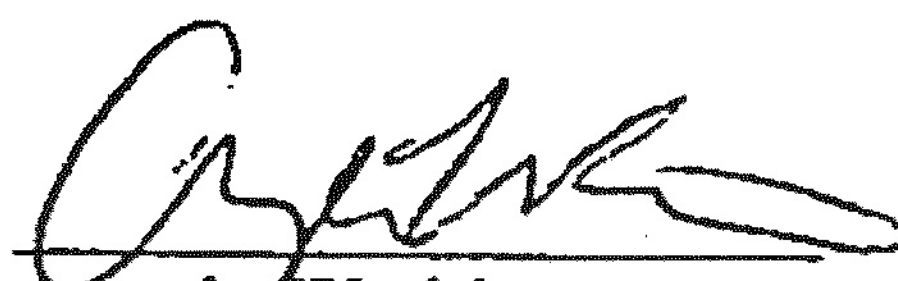
WHEREAS, This is a twenty (20) year lease from July 14, 2009 through June 30, 2029, with an option to extend the lease under the same terms and conditions. The rent is One Dollar (\$1.00) per year. The premises are used as a public retail and wholesale growers market. The tenant will pay all costs of insurance, repairs, utilities, maintenance and capital improvements.

THEREFORE BE IT RESOLVED, That the appropriate city officials are authorized to enter into the Restated Flint City Market Lease Agreement for a period of July 14, 2009 through June 30, 2029, with an option to extend the lease under the same terms and conditions, for which the rental fee is One Dollar (\$1.00) per year.

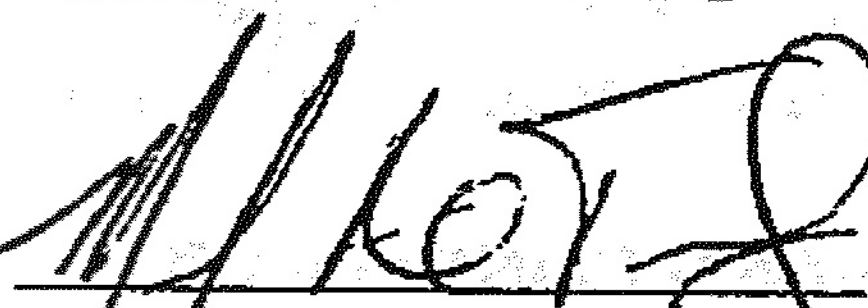
Approved as to Form:

Approved as to Budget:

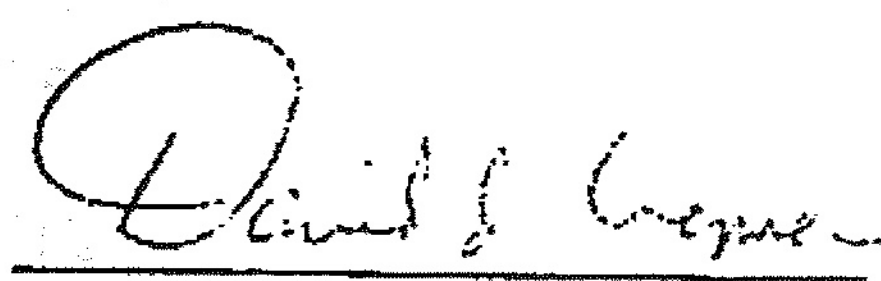
Approved by Finance:



Angela Watkins
Acting City Attorney



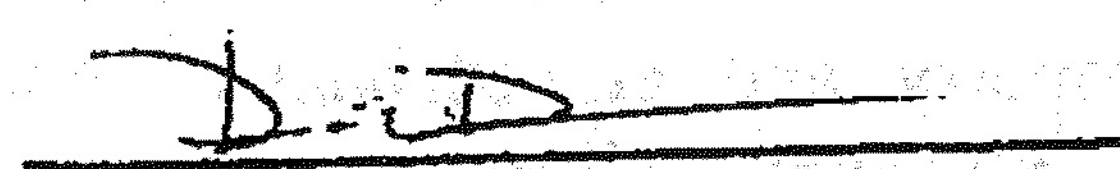
Michael A. Townsend
Budget Director



Leonard Smorch
Finance Director

**APPROVED BY
CITY COUNCIL**

JUL 13 2009



RESTATED FLINT CITY MARKET LEASE AGREEMENT

LANDLORD

City of Flint, a Michigan
Municipal Corporation
1101 S. Saginaw Street
Flint, Mi 48502

TENANT

Uptown Reinvestment Corporation, a
Michigan nonprofit corporation
810 Mott Foundation Building
Flint, MI 48502

Effective Date of Lease: July 14, 2009

BASIC PROVISIONS

- A. Term: Twenty (20) years commencing on July 14, 2009 and ending on June 30, 2029. At the end of the Initial Lease term, Tenant shall have the option to extend the lease for an additional twenty (20) years, with all terms and conditions remaining the same.
- B. Address of Premises: 420 E. Boulevard, Flint, Michigan
- C. Area of Premises: See attached legal description (Exhibit 1).
- D. Rent: \$1.00 per year.
- E. Use of premises: A public retail and wholesale growers market.
- F. Termination: Six (6) months advance written notice.
- G. AbsoluteNet: Tenant to pay all costs of Insurance, repairs, utilities, maintenance, and Capital Improvements as needed.
- H. Personal Property: All equipment and appurtenant personal property currently on the premises is leased hereunder to the Tenant.

TERMS AND CONDITIONS

1. Premises and Purpose. The Landlord leases the premises described on Exhibit I (the "Premises") to the Tenant under the terms of this Lease Agreement. The Premises are to be used as a public retail and wholesale growers market, in a substantially similar manner as it has historically been used by Landlord. To that end, the primary use of the Premises shall be for the sale of fresh fruit and vegetables, plants, flowers, gardening supplies, meat and poultry, eggs, dairy products, breads, and artwork. The premises may also be used for crafts, cultural activities, and other related ancillary services. The Premises shall continue to serve as a source of culture and a meeting place for the residents of the greater Flint community.

The property leased under this Agreement includes all buildings, improvements, equipment, personal property and appurtenances located within the area of the premises described in Exhibit I. The Tenant shall not permit any act, sale, storage, or use of the premises in any manner that may be prohibited under standard forms of fire insurance policies. In addition, no use shall be made or permitted to the premises that shall result in: (a) waste on the

premises; (b) a private or public nuisance that may disturb neighboring property owners; (c) improper, unlawful, or objectionable use, including the sale, storage, or preparation of materials generating odors on the premises (except those odors that are natural or normally associated with the permitted use of the premises as a municipal retail and wholesale growers market); (d) the use of the premises for any form of nude or semi-nude entertainment; (e) any use of the Premises which may be dangerous to life, limb, or property; (f) any activities which have the effect of an immoral influence upon juveniles and minors.

The Tenant shall include in all subleases the requirement that all of its subtenants under the Lease comply with the applicable municipal ordinances concerning signage.

2. Personal Property. The Landlord leases to the Tenant all of the equipment and appurtenant personal property located on the Premises.

3. Commencement Date and Term. This Lease previously commenced on June 25, 2002, which was scheduled to continue for a term of seven (7) years, terminating on June 24, 2009. Thereafter the Tenant exercised its option to extend the Lease for 5 years, which was extended until June 24, 2014. The Landlord and Tenant do hereby agree to extend the agreement for a term of twenty (20) years, commencing on July 1, 2009 and terminating on June 30, 2029. Thereafter, the Tenant shall have the option to extend the Lease, under the same terms and conditions, for an additional twenty (20) year term. In order to exercise that option, Tenant must provide Landlord written notice of its intention to do so not later than six months prior to the extended termination date.

It is further provided that the Tenant may, at any time, without cause or reason, terminate this Lease upon six (6) months written notice. Any obligations of the Tenant under the Lease shall remain in effect for that six-month period. During that six-month period, or immediately after the service of a notice of forfeiture or notice to quit for breach of covenant or condition of the Lease, Landlord may maintain signs and advertisements showing the Premises are being offered for sale or lease and shall, during such periods, at reasonable times and upon reasonable notice to the Tenant, shall show the Premises to prospective tenants or purchasers.

4. Rental. The Tenant agrees to pay as rental for the Premises and personal property a total annual rent of One (\$1.00) Dollar payable in advance on or before the commencement date and on each anniversary thereafter.

5. Taxes, Insurance, Maintenance, and Capital Improvements.

(a) Tenant shall pay any and all state, federal and local taxes applicable to the premises and the business conducted thereon. Tenant shall have the right to contest the amount of real and personal property taxes assessed with respect to the premises, including the right to contest the assessed value of the premises.

(b) Repairs and Replacement.

i) Except as provided below, Tenant shall be solely responsible for performance of and payment for routine maintenance of the premises, including Janitorial services, repairs and replacement, and shall maintain and keep the premises in a clean well kept condition. By way of description but not by way of limitation, the Tenant shall maintain or repair the plumbing, heating, ventilating, cooling, and electrical equipment and make all internal and

external repairs and shall surrender the Premises, at the end of the lease term, in the same condition as when possession was first taken, normal wear and tear from normal use and occupancy accepted.

- ii) The Tenant shall pay and perform Capital Improvements as reasonably necessary to keep the premises habitable for public use as a public retail and wholesale growers market, including all paved parking areas. This Lease is an absolute net lease and the Tenant takes responsibility for all such Capital Improvements during the lease term.

(c) The restated agreement shall not be effective until Tenant has procured and provided Landlord evidence of the insurance required under this section. All coverages shall be placed with insurance companies licensed and admitted to do business in the State of Michigan unless otherwise approved by the Landlord's Risk Manager. Policies shall be reviewed by the Landlord's Risk Manager for completeness and limits of coverage. All coverages shall be with insurance carriers acceptable to the Landlord. Tenant shall maintain the following insurance coverages for the duration of this contract.

- i) Commercial General Liability coverage of not less than one million dollars (\$1,000,000) per occurrence, with a three million dollar (\$3,000,000) aggregate, with the "City of Flint, and including all elected and appointed officials, employees and volunteers, boards, commissions and/or other authorities and their board members, employees and volunteers," named as an "Additional Insured." This coverage shall be written on an ISO occurrence basis form and shall include: Bodily Injury, Personal Injury, Property Damage, Contractual Liability, Products and Completed Operations, Independent Contractors, Broad Form Commercial General Liability Endorsement, (XCU) Exclusions deleted and a per contract aggregate coverage. This coverage shall be primary to the Additional Insureds, and not contributing with any other Insurance or similar protection available to the Additional Insureds, whether said other available coverage be primary, contributing, or excess. The Tenant agrees to indemnify and hold the City of Flint and all elected appointed officials, employees, volunteers, board commissioners and all authorities and their board members, employees, volunteers and agents from any liability for damages to any person or property In, on, or about the Premises arising from Tenant's performance of its obligations set forth in this Lease agreement

- ii) Workers' Compensation Insurance in accordance with Michigan statutory requirements including Employers Liability coverage. The Tenant shall disclose to the Landlord any deductibles, self-insured retentions, or the dollar value of any claims that have been paid out of the policy proceeds. Upon the Landlord's request, the Tenant shall either retain insurance that reduces or eliminates the deductibles, self insured retentions, or claims against the policy limits. The Tenant shall furnish the Landlord with a certificate of insurance for the coverage as described above prior to the Effective Date. The terms of the insurance shall require thirty (30) days' written notice to the Landlord in the event of cancellation or the material change in the policy. Certificates must identify the City of Flint, Risk Management Division, as the "Certificate Holder." The Tenant shall also provide, upon request, a copy of all insurance policies. Tenant shall also ensure that all vendors and other sub-lessees obtain insurance coverages

required by this Lease.

- iii) All risk property insurance coverage, including malicious mischief and vandalism endorsements, on the Premises for the full replacement cost thereof, with building code change endorsements. The Tenant shall also include coverage for the equipment being sub-leased to the Tenant hereunder. As provided above, this insurance coverage shall be evidenced by a Certificate of Insurance provided prior to the Effective Date of the Lease and with terms which give the Landlord thirty (30) days written notice of any cancellation or other material change in the terms of the coverage.

6. Indemnification and Hold Harmless. To the fullest extent permitted by law, Tenant agrees to defend, pay on behalf of, indemnify, and hold harmless Landlord, its elected and appointed officials, and employees ("Landlord Parties") against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the Landlord Parties, by reason of personal Injury, including bodily injury or death and/or property damage including loss of use thereof, which may arise as a result of Tenant's acts, omissions, faults and negligence or of any of Tenant's employees, agents, or representatives.

7. Utilities. The Tenant shall pay all utilities.

8. Acceptances of the Premises by Tenant. The Tenant acknowledges as having completely inspected the Premises and accepts the Premises in their present "as is" condition, and acknowledges that the Tenant has relied upon no representations or warranties from the Landlord whatsoever in entering into this Lease, except those representations and warranties set forth herein.

9. Compliance with Environmental Laws. The Tenant and all of the Tenant's sublessees and licensees shall comply with all applicable rules, requirements, orders, directives and laws arising out of or related to the storage, containment, disposal and filtration of any oil, petroleum, chemical, solid, liquid or gassy product or material that is classified as a hazardous waste or toxic substance within the meaning of the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601-9657; the Hazardous Material Transportation Act of 1975, 49 U.S.C. §1801-1812; the Resources Conservation and Recovery Act of 1976, 42 U.S.C. §6901-6987; or any other federal, state, or local statute, law, ordinance, code, rule regulation, order decree, or requirement relating to or imposing liability or standards of conduct relating to hazardous substances (hereinafter "Environmental Laws"). The Tenant shall Indemnify and hold the Landlord and its elected and appointed officials, employees and volunteers, boards, commissions and members of such boards and commissions, and agents and representatives of the Landlord, harmless from any and all claims, demands, losses, liabilities and expenses, including actual attorney's fees, arising from any violation of the Environmental Laws caused by the use and occupancy of the Premises by the Tenant or the Tenant's sublessees or licensees. To the best of the Landlord's knowledge, no governmental agency or body has made any evaluation, undertaken any interim response activity, remedial action, or asserted any claim that the subject Premises are in any way in violation of any existing Environmental Law. The Tenant shall require that its sublessees comply with section 9 of the restated agreement.

10. Assignment of Subleases.

(a) The Landlord hereby assigns to the Tenant all subleases and licenses pertaining to the premises.

(b) The Tenant may lease, sublease, enter into occupancy agreements, parking agreements, licenses, concession agreements, advertising agreements and all other manner of agreements

with third parties (hereafter the "Tenant's Subtenants") for the use or occupancy of any part of the Premises on terms and conditions acceptable to the Tenant, subject only to the requirement that the use of the Premises or any part thereof shall not violate any term of this Lease, any ordinance of the City of Flint, or any other law. All rents, profits and benefits of such legal arrangements shall belong to and be the property of the Tenant.

(c) The Tenant shall honor all existing leases, licenses, bookings, and other events for which the Landlord is obligated at the Premises, and shall indemnify and hold the Landlord Parties harmless from any damages, liabilities, costs and expenses, including actual attorney's fees, arising out of the Tenant's non performance of those commitments.

11. Prohibition on Assignment. The Tenant may assign this Lease upon obtaining the consent of the Landlord in writing, said consent not to be unreasonably withheld. The granting of such consent in one instance is not a waiver of the Landlord's right to refuse consent of any future assignment. This provision shall have no effect upon and shall not restrict in any way the Tenant's ability to enter into subleases or licenses at the Premises.

12. Alterations and Trade Fixtures. The Tenant may make alterations, additions, improvements, partitions and structural changes to the Premises without the Landlord's written consent. However, in the event any single alteration, addition, improvement, partition or structural change to the Premises is expected to cost more than one hundred thousand (\$100,000) dollars, the Tenant must first provide the Landlord with written notice. The Tenant shall obtain Builder's Risk Insurance, naming the Landlord as the insured under the policy during the construction of any renovation more than one hundred thousand (\$100,000) dollars. The Tenant and Tenant's Subtenants may install trade fixtures, furnishings and other nonpermanent additions without giving notice to the Landlord. All such alterations, improvements and installations shall be done by the Tenant at its own expense and in a first-class worker-like manner. Any alterations, changes or additions that have been incorporated into the structure of the building shall be left upon the Premises at the termination of the Lease, and shall be the Landlord's property. The Tenant agrees to indemnify and hold the Landlord harmless from any damages to personal property or persons arising out of the Tenant's undertaking to make alterations, additions and improvements by the Tenant. The Tenant also agrees to indemnify and hold the Landlord harmless from any and all claims of construction liens, artisan liens or other claims of lien interests in and to the Premises arising out of improvements contracted for, by or on behalf of the Tenant. In the event that the Landlord receives notification of a lien claim, the Tenant shall, within forty-five (45) days after receipt of written notice from the Landlord, either discharge the lien claim or arrange a surety bond for the removal of the lien claim.

13. Reconstruction. If, during the term of the Lease, the Premises or the building of which the Premises are a part is totally destroyed by fire, earthquake, act of God, the elements or by other causes, then the Tenant may, at its option, automatically terminate the Lease at the time of the total destruction, with no liability to either party, with exception of liabilities covered by builder's risk insurance or which were accrued under the Lease prior to the destruction. Alternatively, as good and tenable condition as they were prior to such damage.

In case the Premises is partially destroyed by such cause, the Landlord shall, with the insurance proceeds available through the Tenant, promptly undertake to repair the building and the Premises to put them in substantially as good and tenable condition as they were prior to such damage. Provided, however, if the amount of property destruction substantially impairs Tenant's ability to utilize the Premises, Tenant may terminate the Lease upon seven (7) days notice.

14. Eminent Domain.

(a) If the entire premises are taken by any governmental authority or agency under

the power of eminent domain during the term of this Lease, then this Lease shall automatically terminate.

(b) If only a portion of the premises is taken by any governmental authority or agency under the power of eminent domain and said taking materially alters the business of Tenant, then Tenant may terminate this Lease by notifying Landlord in writing of its election to terminate on or before the date the portion taken is surrendered to the condemning authority. If Tenant does not terminate this Lease, then the Lease shall remain in effect and the Landlord shall use that portion of the eminent domain award as is necessary to repair and alter the premises to accommodate the Tenant's continued occupancy.

(c) All awards in eminent domain proceedings for loss or diminution in the value of the premises, leasehold and all real property interests shall belong to Landlord. All awards in eminent domain proceedings for relocation of Tenant, loss or diminution in value of Tenant's improvements and betterments and Interruption of Tenant's business shall belong to Tenant.

15. Quiet Enjoyment. The Landlord covenants that the Tenant, while not in default, shall peacefully and quietly enjoy the Premises for the term aforesaid, and for the purposes of Tenant's use hereinbefore described.

16. Indemnification From Loss or Damage. The Landlord shall not be liable for any damage to the property of the Tenant or of others located upon the Premises, including loss of damage to any property of Tenant or others by theft or otherwise, unless caused by the acts, omissions, faults and negligence of Landlord or Landlord's employees, agents, or representatives. The Landlord shall not be liable for any injury or damage to persons or property of any person resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow or leaks from any part of the Premises, or from pipes, appliances or plumbing works, exterior grounds and paved parking areas, or roof, or from any other cause of whatever nature unless caused by the acts, omissions, faults and negligence of Landlord or Landlord's employees, agents, or representatives. The Landlord shall not be liable for any such damages or injury caused by Tenant or Tenant's Subtenants on the Premises. All property of the Tenant kept or stored on the Premises shall be kept or stored at the risk of the Tenant only, and Tenant shall hold the Landlord harmless from any and all claims arising out of damages to the same, including subrogation claims by the Tenant's insurance carrier, unless such damage is caused by the acts, omissions, faults and negligence of Landlord or Landlord's employees, agents, or representatives. The parties acknowledge that the Landlord has no operating control of any kind or type whatsoever under this Lease Agreement and shall not be liable for any damages or injury caused upon the premises unless caused by the acts, omissions, faults and negligence of Landlord or Landlord's employees, agents, or representatives.

17. Default; Remedies. In the event Tenant fails to pay rent, taxes or utilities after thirty (30) days' written notice from the Landlord of the breach, the Landlord may declare a default under this Lease.

In the event Tenant fails to cure any non-monetary other breaches after seventy-five (75) days written notice from the Landlord, the Landlord may declare a default under this Lease. In the event that there are non-monetary breaches which are incapable of being cured within seventy-five (75) days following written notice, and in the event that the Tenant is making every reasonable effort to address and correct those breaches, such conduct shall be deemed to be not in breach of the Lease.

Upon default, the Landlord may elect to terminate the lease or alternatively, may give the Tenant written notice that the lease has been declared in default, and that any amounts due and owing under the lease are immediately due. The Landlord may then relet the Premises in a good faith effort to mitigate its damages, and upon such reletting, may apply any sums received towards the payment of the indebtedness owed under the lease, to the payment of costs and expenses of reletting (including reasonable and necessary expenses of preparing the Premises for a replacement tenant, including brokerage fees and attorney's fees), and then for application against any damages, including physical injury to the Premises. No retaking shall be construed as an election to terminate the lease unless written notice is given to the

Tenant stating that the lease has been terminated.

18. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed as waiver of such term, covenant or condition. No covenant, term or condition of this Lease shall be deemed to be waived by Landlord or Tenant unless such waiver is in a written document executed by the Landlord and Tenant.

19. Incorporation of Exhibits. All exhibits described in this Agreement shall be deemed to be incorporated into and made a part of the Lease. If there is any inconsistency between the Lease and the provision of any exhibit, then the Lease shall control.

20. Controlling Law. This Lease shall be interpreted in accordance with the laws of the State of Michigan.

21. Integration. This restated Lease concludes and supersedes all prior understandings, representations, negotiations and correspondence between the parties, whether written or oral. It is the entire agreement between the parties with respect to all matters contained herein. This Lease can only be modified by a written agreement signed on behalf of the Landlord and Tenant by their respective authorized representatives.

22. Further Assurances. Each party agrees that it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other party during the term of this Lease.

23. Illegality. If any provision of this Lease is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

24. Memorandum. The parties, will execute a short form or memorandum of this Lease, upon the Tenant's written request, which is in the form suitable for recording in the Office of the Register of Deeds. The cost of recording shall be paid by the Tenant.

25. Notice. All notices, approvals, requests, consents and other communication given pursuant to this Lease shall be in writing and shall be deemed to have been duly given when received if hand delivered, sent by telefax, sent by Federal Express overnight service or sent by United States certified or registered mail, addressed as follows:

If to Landlord: The Mayor of the City of Flint, 1101 S. Saginaw Street, Flint, MI 48502;
Finance Director, City of Flint, 1101 S. Saginaw Street, Flint, MI 48502;
and The Chief Legal Officer, City of Flint, Law Department, 1101 S.
Saginaw Street, Flint, MI 48502

If to Tenant: Uptown Reinvestment Corporation, Attn: Tim Herman, President, 519
South Saginaw St, Ste. 200, Flint, MI 48502; and Timothy H. Knecht,
Esq., Cline, Cline & Griffin, 1000 Mott Foundation Bldg, 503
South Saginaw Street, Ste. 1000, Flint, MI 48502-1861.

26. Landlord's Existing Employees. The Landlord has employees who currently staff and manage the Premises that were relocated by the Landlord prior to the commencement of the original Lease executed on June 11, 2002. The Tenant shall have no responsibility or liability for any of the City's employees.

27. Arbitration. With the exception of a tenancy proceeding to regain possession of the premises upon a default by the Tenant, any dispute arising under or related to this Lease shall be

arbitrated. Any arbitration award shall be binding and enforceable, and shall be the exclusive remedy of the parties. The arbitration shall be conducted by a single arbitrator. If the parties cannot agree-upon an arbitrator, then the arbitrator shall be selected by the Genesee County Circuit Court. If a proceeding is brought before the Genesee County Circuit Court for the selection of an arbitrator, the court shall maintain continuing jurisdiction of the proceeding through the enforcement of the award, if any. Venue for the arbitration shall be Genesee County, Michigan.

28. Non-Discrimination. Tenant shall not discriminate in employment or contracting on the basis of race, color, national origin, age, sex, sexual orientation, disability, veteran or marital status or other protected status covered by federal, state or local law.

WITNESSES:

Alicia J. Miller

LANDLORD: CITY OF FLINT

Michael K. Brown

Michael K. Brown, Acting Mayor

TENANT: UPTOWN REINVESTMENT CORPORATION

Timothy Herman

Timothy Herman, President

APPROVED AS TO FORM:

Angela Watkins

Angela Watkins, Acting City Attorney

Dated: 7-15-09

APPROVED AS TO FINANCES:

Leonard Smorch

Leonard Smorch, Director of Finance

Dated: 7/15/09

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Inez M. Brown
Inez Brown, City Clerk

Dated: 7/17/09